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July 17, 1997

BY FEDERAL EXPRESS

Ms. Blanca S. Bayo
Director
Florida Public Service Commission
Division of Records and Reporting
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0862

960254 TI

Re: In re: Proposed Part VXI - Rules Governing Prepaid Calling Services; Rules 25-24.900, F.A.C., Scope and Waiver; 25-24.905, F.A.C., Terms and Definitions; 25-24.910, F.A.C., Certificate of Public Convenience and Necessity Required; 25-24.915, F.A.C., Tariffs or Price Lists; 25-24.920, F.A.C., Standards for Prepaid Calling Services and Consumers Disclosure; 25-24.925, F.A.C., Refunds; 25-24.930, F.A.C., Adequacy of Service; 25-24.935, F.A.C., Discontinuance of Service; 25-24.940, F.A.C., Penalties

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and fifteen copies of Comments of PhoneTime, Inc. Also enclosed is a diskette containing the comments in Word Perfect 5.1 format.

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Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning it in the enclosed self-addressed envelope.

Thank you for your attention to this matter.

Sincerely,


Margaret M. Charles
Rachel D. Flam

Counsel for PhoneTime, Inc.

Enclosure

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**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Proposed Part VXi - Rules Governing
Prepaid Calling Services; Rules 25-24.900,
F.A.C., Scope and Waiver; 25-24.905, F.A.C.,
Terms and Definitions; 25-24.910, F.A.C.
Certificate of Public Convenience and
Necessity Required; 25-24.915, F.A.C.,
Tariffs or Price Lists; 25-24.920, F.A.C.,
Standards for Prepaid Calling Services and
Consumers Disclosure; 25-24.925, F.A.C.,
Refunds; 25-24.930 F.A.C., Adequacy of
Service; 25-24.935, F.A.C., Discontinuance
of Service; 25-24.940, F.A.C., Penalties**

Docket No. 960234-TI

COMMENTS OF PHONETIME, INC.

I. Introduction

PhoneTime, Inc. ("PTI"), by its undersigned counsel, hereby respectfully submits these Comments in response to the Florida Public Service Commission's ("Commission") Notice of Rulemaking in the above captioned docket proposing rules governing prepaid calling card service ("Proposed Rules").¹ As a preliminary matter, PTI applauds the Commission for its

¹ *In re: Proposed Part VXi - Rules Governing Prepaid Calling Services; Rules 25-24.900, F.A.C., Scope and Waiver; 25-24.905, F.A.C., Terms and Definitions; 25-24.910, F.A.C. Certificate of Public Convenience and Necessity Required; 25-24.915, F.A.C., Tariffs or Price Lists; 25-24.920, F.A.C., Standards for Prepaid Calling Services and Consumers Disclosure; 25-24.925, F.A.C., Refunds; 25-24.930 F.A.C., Adequacy of Service; 25-24.935, F.A.C., Discontinuance of Service; 25-24.940, F.A.C., Penalties, Notice of Rulemaking, Order No. PSC-97-0728-NOR-TI (June 20, 1997), reprinted in 23 Fla. Admin. Weekly 26 (June 27, 1997)*

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efforts to protect the interests of Florida's prepaid calling card service consumers and, indeed, concurs in the need for a high level of consumer protection. In that connection, PTI herein proposes certain modifications to the proposed rules that it believes strongly will facilitate the offering of reliable, high quality, cost efficient prepaid services to Florida consumers.

II. Background

PTI, a telecommunications company in operation since July of 1995, is the nation's leading provider of prepaid calling cards. PTI currently operates in several states.

Critical to PTI's success has been its insistence on providing consumers high quality, dependable services at competitive prices. Inasmuch as the Commission's proposed rules mandate particular methods of delivering prepaid calling service, they will, if adopted, deny Florida consumers the full range of PTI's and other companies'² prepaid calling products.

III. The Commission's Focus Should Be On Safeguarding Consumers' Interests Generally and Not on Any One Method of Doing So.

PTI believes that where companies can create economics for consumers while still affording them a high level of protection, the Commission should make allowances for -- and, indeed, encourage -- such initiative and innovation. The robust competition that is the natural result of such initiative and innovation can and does accrue to the benefit of consumers in very tangible ways. PTI understands that the purpose of the Commission's proposed rules is to "increase the customer's knowledge of the prepaid calling service . . . and to protect the customer

("Notice").

² "Company" or "companies" as used herein has the same meaning as in the proposed rules. Proposed Rule 25-24.905(1).

by ensuring that [the] service contracts between the provider and the distributor are honored.”³

As a service provider in a very competitive environment, PTI appreciates this concern and, indeed, concurs in the need to ensure a high level of protection for consumers. PTI, however, believes that there are alternative ways to provide a high level of consumer protection that have the added advantage of being cost-effective to the consumer. PTI thus urges the Commission to embrace an approach that would provide consumer protection while at the same time allowing innovative companies like PTI the flexibility to provide cost-efficient services to the Florida public. PTI recognizes that, as part of its proposed rules, the Commission proposes to grant waivers of its rules under certain circumstances.⁴ PTI believes, however, that flexibility should be the rule and not the exception.

A. The Commission's Focus Should Be on Reliability, Dependability and Cost-Efficiency, Rather than "Toll-Free" Network Access.

PTI believes that the Commission should require reliable, reasonably priced, cost-efficient, not necessarily "toll-free," network access to prepaid platforms. By specifying use of a "toll-free Network access number" in the proposed rules,⁵ PTI believes that the Commission may be inadvertently and unnecessarily constraining the ability of companies to provide cost-savings to consumers.

PTI recognizes the Commission's very serious concern with high access charges and even

³ Notice at p. 3200.

⁴ Proposed Rule 25-24.900(2).

⁵ Proposed Rule 25-24.920(1)(c).

fraud in connection with network access.⁶ As the leading prepaid calling service provider in the country, PTI understands the need to provide consumers maximum value for their calling card purchase price. However, as the Commission itself has realized, "toll-free" access is not necessarily the solution to the problem. Indeed, in its Order in this docket of April 29, 1996, the Commission stated as follows:

The principal issue regarding debit cards is the considerable potential for fraud. While debit cards are paid for in advance, it is possible to issue cards with an 800 number that does not work at all or that draw[s] down time for unanswered calls and busy signals.⁷

Moreover, "toll free" service is not necessarily free. The cost to companies to provide this service is often passed on to the consumer in the form of higher rates for "toll-free" access-based services like prepaid calling cards. With local access telephone numbers, however, there is not the same concern. Allowing for choice between toll-free and local calling numbers thereby gives the consumer the choice to save money.

Accordingly, rather than prescribing a specific network access mechanism such as toll-free access, the Commission should prescribe generic parameters within which prepaid calling card providers must operate. PTI believes that rules allowing for use of local access telephone numbers strike the appropriate balance -- protecting consumers from high access charges while at the same time affording them a clear choice in price and service.

⁶ See note 7 and accompanying text, *infra*.

⁷ *Re Establishment of Appropriate Regulatory Policy for Interchange Companies*, Order No. PSC-97-0560-POF-TI (Apr. 29, 1996).

B. The Commission's Fees Should Be an Ensuring that Consumers Can Conveniently Obtain Accurate Account and Other Information and Not on the Method by Which That Objective is Achieved.

For the reasons discussed above concerning network access, PTI believes that a rule allowing customer service access via local telephone numbers strikes an appropriate balance between the dual needs for consumer protection and flexibility for companies to determine how most effectively to comply with this important requirement in the context of providing high quality service at competitive prices.⁹ This is particularly true since, as discussed below, some of the same information can be made available to consumers via means other than a customer service line.

To the extent that the Commission is proposing to require that information, including "balance of use" information, be provided through a customer service line on a 24 hour-a-day, 7 days-a-week basis, PTI submits that there are alternative ways of providing the exact same information to consumers that are easier to use and more cost-effective than accessing a customer service representative.⁹ In PTI's case, for example, each time a customer begins a call using one of its calling cards, a voice prompt announces the balance remaining on that card. Additionally, PTI provides bilingual (English/Spanish) live operator customer service 10 hours a day Monday

⁹ In Proposed Rule 25-24.920(1)(b), the Commission specifies use of a "[i]oll-free customer service number."

⁹ In Proposed Rule 25-24.920(3), the Commission enumerates certain types of information, including "balance of use in account" information, which it proposes to require to be made available through a company's customer service line. In Proposed Rule 25-24.920(4), the Commission proposes to require 24 hour-a-day, 7 day-a-week customer service by either live operator or a combination of live operator and recorder. It is accordingly unclear whether the types of information specified in Proposed Rule 25-24.920(3), including "balance of use in account" information, would be required to be available at all times.

through Saturday. PTI believes strongly that this combination of service options strikes an appropriate balance -- providing consumers convenient access to information which is certainly very important while at the same time allowing companies (PTI, in this case) to choose the best, most cost-effective means of providing such service. This savings in PTI's cost of providing service is then passed on to the customer in the form of lower rates. A requirement that would, in effect, force companies to choose between creating a 24 hour-a-day, 7 day-a-week live operator customer service line and investing in new technology to provide the same information will raise the cost of doing business for such companies, which may well impact the cost at which such companies can provide their services. Because PTI believes that there are alternative, more cost-effective ways to meet consumers' very valid needs for account and other information, PTI here again urges the Commission to embrace a position of flexibility so as to allow for and foster competition and innovation among companies, which inevitably brings measurable benefits to consumers -- both economically and in terms of the quality of products made available to them.

IV. Companies Who Use Their Best Efforts to Publish Rate Information to Consumers at the Point of Sale Should Be Deemed to Have Satisfied Their Obligations Under the Commission's Rules.

In this extremely competitive environment where rates for telecommunications services are in constant flux, PTI believes that the most effective way to ensure that consumers are receiving the most up-to-date and accurate rate information is to deliver that information at the point of sale. The Commission has proposed to require carriers to display, on either their calling

card, the card's packaging, or in some prominent location at the point of sale, rate information.¹⁰ PTI absolutely agrees that consumers must be given this information to make an intelligent choice about which card to purchase. PTI's concern, however, is that, given the very fluid nature of rates in the telecommunications industry today, consumers relying on such information printed on their cards or the packaging may, soon after the date of purchase, unknowingly find themselves in possession of stale or obsolete information which could, itself, be the basis of consumer complaints. PTI cannot, after all, control how quickly its cards are sold at any particular location or when a consumer will use the card. Such a result would obviously contravene the Commission's goals in proposing these rules. PTI therefore urges the Commission to encourage the dissemination of rate information at the point of sale and, indeed, to discourage the printing of such information on cards and packaging.

Moreover, a *legible*, complete and accurate listing of rates could not possibly fit on a card or its packaging unless the packaging were manufactured so as to be substantially larger than the card itself, an added cost to consumers. PTI suggests that the Commission consider requiring companies to do what PTI is already doing: to print on the cards and/or packaging that service is being provided in accordance with the company's tariff and specify the location of the tariff.

Given the infeasibility of requiring companies to police each and every point of sale, PTI believes that where a company can demonstrate that it has used its best efforts to ensure that such information is afforded the consumer at the point of sale, the company should be deemed to have fulfilled its obligations under the Commission's rules. In this context, a company should be

¹⁰ Proposed Rule 25-24.920(2). Also proposed to be required is information pertaining to applicable surcharges and expiration policy, if any. *Id.*

found to have used its best efforts where: (i) the dissemination by the distributor of such information at the point of sale is made a contractual condition of doing business; (ii) the carrier provides to the distributor ample display material (e.g., posters) containing such rate information; and (iii) a written statement reminding the distributor of its obligation to display this information at the point of sale is distributed with each order of cards purchased by the distributor.

For many companies, rate information displays at the point of sale are a primary means of marketing. Accordingly, they have a very great incentive to try to ensure that such information is provided to the customer. Indeed, PTI presently has in place all of the proposed protections -- i.e., best efforts factors -- described above. PTI believes that other companies have a like incentive.

V. The Commission Should Explicitly Enumerate Those Conditions That Will Trigger a Company's Refund Obligation.

PTI respectfully requests clarification with respect to the Commission's proposal that a company be required to provide a refund in any case where "for reasons beyond a customer's control" a calling card is rendered "unusable."¹¹ It is unclear from the language of the proposed rule what circumstances might trigger the company's refund responsibility. Without any clear guidance, a company attempting to responsibly prepare to meet any potential future obligations could find itself incurring great and unnecessary cost. Such cost might well be expected to impact the cost at which the company could provide the service to its customers.

¹¹ Proposed Rule 25-24.925.

VI. The Commission's Rules Should Be "Grandfathered" To Accommodate Companies with Cards Already in the Stream of Commerce.

If and when the proposed rules are adopted, the Commission should "grandfather" companies with cards already in the stream of commerce. The new rules should apply to cards issued as of three months (or ninety days, whichever is longer) after the rules' date of adoption. As previously stated herein, PTI concurs fully with the Commission's goal of increasing consumer protection. Nonetheless, a failure to make an accommodation in the nature of PTI's proposal would work a very great hardship on companies with cards already in the stream of commerce that cannot be retrieved. Such a burden may well be expected to affect the cost at which such companies can provide their service to the very consumers that the Commission seeks to protect.

VII. Conclusion

PTI believes that the Commission's proposed rules, if adopted, will, with some modification, go a long way towards ensuring increased consumer protection -- an extremely important goal. Specifically, PTI urges the Commission to adopt an approach of flexibility with respect to its network access and customer service requirements. While PTI absolutely concurs in the need to provide a high level of protection for consumers in these areas, PTI believes strongly that by permitting companies to determine how they will provide such protection in the context of delivering a high quality, competitive, cost-effective service, Florida's consumers will be best served. The benefits to consumers of a highly competitive market in telecommunications services are well documented. For the reasons discussed herein, PTI urges further that the Commission encourage distribution of rate information at the point of sale and, indeed,

discourage the printing of such information on cards and packaging. In connection with this proposal, PTI proposes further that a presumption be created in favor of companies who demonstrate that they have used their best efforts to get rate information to the consumer at the point of sale. PTI respectfully requests that the Commission expressly enumerate those conditions that will trigger a company's refund obligations under the rules. Finally, PTI requests that the Commission grandfather companies with cards already in the stream of commerce so as to make the new rules applicable to cards issued as of three months (or 90 days, whichever is longer) post the rules' adoption.

Respectfully Submitted,

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Dated: July 17, 1997